SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 655 (Bradford)
Version: April 26, 2021
Hearing Date: May 4, 2021
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Insurers: diversity

DIGEST

This bill promotes greater diversity in California's insurance industry through three mechanisms: (1) it increases the number of California insurance companies that must report to the California Department of Insurance (CDI) every two years regarding supplier and governing board diversity; (2) it clarifies what insurance companies must include in that report with respect to their policies or goals to increase board diversity; and (3) it encourages California insurers participating in the California Organized Investment Network (COIN) to consider utilizing diverse investment managers, as defined.

EXECUTIVE SUMMARY

Existing law contains a number of provisions intended to encourage greater diversity in the insurance industry. This bill clarifies and expands upon three of them. First, the bill decreases, from $100 million to $75 million, the threshold amount of revenue from premiums that an insurance company can take in before becoming subject to a requirement to conduct demographic surveys of their suppliers and their boards of directors every two years. Second, the bill expounds upon what insurance companies must include in those biennial reports with regard to their goals or policies to increase board diversity. Specifically, the bill requires insurance companies to include either a board diversity policy statement, as defined, or a goal to have at least one diverse board member on the insurer's board of directors. Finally, the bill encourages California insurers participating in the California Organized Investment Network to consider utilizing the services of investment management firms whose team of investment managers consists of at least 51 percent women, veterans, minorities, or lesbian, gay, bisexual, transgender, or queer persons, or a combination of persons in those groups.

The bill is sponsored by Ricardo Lara, the California Insurance Commissioner. Support is from business and insurance groups favoring greater diversity in the insurance and investment industry. There is no opposition on file. The bill passed out of the Senate Insurance Committee by a vote of 11-0.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Requires admitted insurers that write one hundred million dollars ($100,000,000) or more in California premiums to report to the California Insurance Commissioner (commissioner) biennially on its supplier diversity and governing board diversity efforts during the previous two years, and its goals regarding board diversity going forward. (Ins. Code §§ 927.2 and 927.3.)

2) Establishes the California Organized Investment Network (COIN) program, a voluntary insurance company investment program that encourages insurers to make investments in California's underserved and low-to-moderate-income communities. (Ins. Code § 926 *et seq*.)

3) Encourages insurers to be supportive of investments that promote social, economic, and environmental benefits. (Ins. Code § 926(b).)

This bill:

1) Makes legislative findings regarding the fact that the boards of directors of California's insurance industry remain predominantly white and male and that the presence of board members from historically underrepresented communities remains disproportionately low.

2) Lowers the threshold amount that an insurance company has to write in California premiums to trigger the requirement to report on supplier and governing board diversity, from $100 million to $75 million.

3) Requires an insurer's biennial report to the Commissioner to include a board diversity policy statement or to state its measurable goal to include at least one diverse board member on the insurer's board of directors.

4) Defines "board diversity policy statement" to refer to corporate governance policy language intended to increase board diversity, and specifies the statement should describe how the board considers gender, ethnicity, race, age, geographic location, sexual orientation, skills, and experience when identifying director candidates and throughout the nomination process.

5) Encourages insurers participating in the COIN program to consider utilizing the services of diverse investment managers, as defined, to the extent possible.

6) Defines "diverse investment managers" to mean an investment management organization located, or actively making investments, in California, where at least

51 percent of its investment managers are made up of women, veterans, minorities, or LGBTQ individuals.

COMMENTS

1. Evidence of the problem the bill is intended to address

According to reports compiled by the California Department of Insurance based on 2019 survey results, California's insurance industry leadership remains disproportionately white, male, and straight by wide margins in spite of the rich diversity of the state's population overall. Of at least 1,300 seats on the boards of directors of the California insurance companies surveyed, nearly 80 percent were held by Caucasians, and 70 percent of the occupants identified as men. By contrast, African Americans, Asians/Pacific Islanders, Hispanics/Latinos, and American Indians comprised only 6.5 percent, 4.4 percent, 3.4 percent, and 0 percent, of board members, respectively. At the same time, less than 1 percent of board members publicly identified as LGBTQ.

The author and sponsor also point to studies that indicate the same lack of diversity plagues the investment management sector, which has a role in the insurance industry handling investment of the money that insurers must hold in order to be able to pay out claims when necessary. According to a 219 Knight Foundation analysis, firms owned by white men managed 98.7 percent of the $69 trillion managed by the U.S. asset management industry. The author and sponsor state that "[d]iverse firms owned by women and those from underrepresented communities are stuck managing a penny on the dollar despite being overrepresented in the top quartile of investment performance, which includes hedge funds, mutual funds, real estate funds, and private equity funds."

In light of these statistics, this bill proposes three additional measures adding to and expounding on ongoing efforts to promote greater diversity in the insurance industry. Since two of these measures mention classification by race, gender, and other constitutionally suspect categories, they invoke this Committee's jurisdiction to review legislation for potential concerns under Equal Protection and related doctrines. Since the bill involves reporting on demographic information, the bill also invokes this Committee's jurisdiction related to privacy. For the reasons elaborated in the Comments below, the bill does not raise any significant concerns with regard to either.

2. Expounding on the board diversity-related policies and goals that must be included in the biennial report

The first component of the bill has to do with the content of board diversity policies. Existing law requires that, as part of their biennial report to the CDI, California insurance companies must include "[t]he insurer's goals regarding board diversity, including outreach and communication strategies to diversify its board." (Ins. Code §

927.3(a)(2)(B).) This bill expounds upon that existing requirement by instructing insurance companies to also submit: "[a] board diversity policy statement or a measurable goal or goals to include at least one diverse board member on the insurer's board of directors." The bill goes on to define a "board diversity policy statement" as "any language that refers to an insurer's corporate governance policy or guidelines, with the goal of increasing diversity on the insurer's board of directors" including "how the board considers gender, ethnicity, race, age, geographic location, sexual orientation, skills, and experience when identifying director candidates and throughout the nomination process." The bill defines a "diverse board member" as anyone who "self-identifies as a woman, nonbinary, Black, African American, Hispanic, Latino-Latina, Asian, Pacific Islander, Native American, Native Hawaiian, Alaskan Native, veteran or disabled veteran, lesbian, gay, bisexual, transgender, or queer."

The bill's use of the phrase "a measurable goal or goals" in this context might ordinarily raise some constitutional eyebrows. Both the U.S. and California Constitutions contain an Equal Protection Clause. The federal Constitution says: [n]o State shall… deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const., Amend. XIV, Sec. 1.) Very similarly, the state Constitution states that: "[a] person may not be… denied equal protection of the laws." (Cal. Const., Art. 1, Sec. 7(a).) Courts applying the constitutional concept of equal protection have ruled that laws drawing suspect classifications between people and treating them differently on that basis are subject to heightened judicial scrutiny. Most such laws "may be upheld only if they are shown to be necessary for furtherance of a compelling state interest and they address that interest through the least restrictive means available." (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 33.) This is so whether or not "the intent behind the law is claimed to be benign or remedial." (*Id. at* 20-21.)

The courts have ruled that, from the point of view of equal protection analysis, merely using the word "goal" instead of the term set-aside or quota does not, by itself, alter the Equal Protection calculus. (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 35.) However, in this instance, the fact that the bill mentions "measurable goals" does not appear to raise constitutional concerns for several reasons. First, the inclusion of a "measurable goal" in the report is optional. The plain language of the bill makes it clear that, rather than set forth a measurable goal, an insurance company can elect to submit a board diversity policy statement instead. Second, the "measurable goal" mentioned in the bill appears to be purely aspirational. No time frame for achieving the goal is mentioned and, while insurers could be penalized for failing to submit the required report, there is no express or implied consequence if the insurance company elects to set forth a measurable goal for including a diverse member on its board but then fails to achieve that goal. Finally, as a sort of catch-all backstop against any other possible Equal Protection concerns, the bill includes (as part of the existing statute that the bill amends) the following provision at subdivision (c): "This section does not require quotas, set-asides, or preferences in regard to an admitted insurer's governing board."

3. Lowering the threshold revenue from premiums that triggers the biennial diversity reporting requirement

The second component of the bill has to do with which insurance companies must comply with the requirement to undertake the biennial survey and report regarding the diversity of their supplier network and board of directors. Currently, only insurance companies writing at least $100 million in California premiums have this obligation. The bill proposes to reduce that threshold to $75 million. According to the Senate Insurance Committee's analysis of the bill, the change would obligate approximately 45-55 more insurers to undertake the survey and reporting than do now.

Because the distinction drawn by this component of the existing law and the bill has to do with market size, and market size is not a constitutionally suspect classification, this aspect of the bill does not raise significant Equal Protection concerns.

4. Encouraging consideration of diverse asset managers for COIN participants

The last component of the bill concerns the California Organized Investment Network (COIN). COIN is a voluntary program that California insurance companies may participate in to make investments in California's underserved and low-to-moderate-income communities. (Ins. Code § 926 *et seq*.) In this way, at least some portion of the funds that insurance companies must maintain as a hedge against future claims can be invested in ventures that seek to do more than simply generate a return.

Existing law makes it the policy of this state that insurers should be supportive of investments that promote social, economic, and environmental benefits. This bill would add to that policy the suggestion that insurance companies should consider making these investments with an emphasis on using diverse investment managers to the extent possible. It goes on to define "diverse investment managers" as investment management companies "that are either located in, or actively make and hold investments in, California and whose investment managers are composed of at least 51 percent women, veterans, minorities, or lesbian, gay, bisexual, transgender, or queer persons, or a combination of persons in those groups."

Although these provisions make mention of constitutionally suspect classifications, they do not raise concerns under Equal Protection doctrine because they come in the form of a suggestion, rather than a mandate of any kind. The language invites insurance companies to "consider" placing "emphasis" on using diverse investment managers, and even these suggestions are caveated by the phrase "to the extent possible." There is no negative consequence to the insurer, express or implied, if the insurer elects to ignore this suggestion.

5. Privacy considerations

Any time that demographic data must be reported publicly, there is the possibility that people's personal information might get revealed in the process. As a result, demographic reporting can sometimes raise privacy concerns.

In the case of this bill, the demographic reporting is already part of the existing statute and contains significant safeguards to protect the privacy interests at stake. Insurers must give their board members the opportunity to participate in the demographic survey, but that survey must come with a written disclosure notifying the board member that the board member's decision to disclose their demographic information is voluntary, that no adverse action may be taken against the board member or the insurer if the board member declines to participate in the survey, and that only the aggregate data collected for each demographic category will be reported. The insurer has to collect the survey results in a manner that maintains the anonymity of the responding board member and the confidentiality of the data reported. In addition, the insurer has to transmit the survey response data to CDI in a manner that does not associate the survey response data with an individual board member. Finally, while the statute requires the CDI to publish the results of these surveys on its website, recent amendments to the bill clarify that all of the information presented must be in the aggregate and may not identify any individual respondent or insurer.

Provided that these safeguards are followed, this bill and the underlying statute do not present significant privacy concerns.

6. Arguments in support of the bill

According to the author:

> In November 2020, the Department of Insurance released results from the California Insurance Diversity Survey that unveiled some disconcerting disparities in boardrooms across 260 insurance companies (comprising 90 percent of the total market share). From the data collected in 2019, among at least 1,300 board seats surveyed, nearly 80 percent were occupied by Caucasians, and 70 percent identified as men. Meanwhile, less than 1 percent of board members publicly identified as LGBT and those from historically underrepresented communities continue to remain disproportionately low. Research has shown that governing boards are better equipped when their members are comprised of a mix of people with different backgrounds and experiences.
>
> Encouraging diversity strengthens our insurance market and its protection of Californians. SB 655 builds upon California's efforts to

> improve diversity in the insurance industry's highest governing levels by requiring more companies to participate and include measureable goals in the California Insurance Diversity Survey. SB 655 also defines the term Diverse Investment Manager, a new definition for the Department's COIN program, which focuses on inclusivity within the asset management industry.

As sponsor of the bill, California Insurance Commissioner Ricardo Lara writes:

> SB 655 will build on the progress of my Department's nationally recognized Insurance Diversity Initiative by expanding the pool of insurance companies subject to reporting, thus creating a more thorough dataset. This data will help the Department further create and expand outreach and engagement programs that foster greater economic development, especially for diverse-owned businesses […]. […] This bill will also codify a definition for the term "diverse investment manager" to address the structural inequalities within the investment community. This definition will provide a means for insurance companies to target their investments to diverse managers who support environmentally sustainable programs and affordable housing projects for California to help improve our way of life and provide a stable home for those who need it.

In support, the New America Alliance writes:

> Our members, most operating in or from California, leverage their success and influence as leading money managers to increase the availability of investment capital for women and minority-owned firms, and to accelerate diverse leadership in entrepreneurship, corporate America, and public service. We passionately believe access to investment capital for women and minority-owned businesses is one of the last frontiers of the civil rights movement.
> The Department of Insurance's nationally recognized Insurance Diversity Initiative continues to demonstrate how public policy can be a catalyst for equitable change when it comes to advancing diversity within the boardrooms and procurement practices of insurance companies.

SUPPORT

Ricardo Lara, California Insurance Commissioner (sponsor)
Above All Consulting, Inc.
Black Leadership Council
California Black Chamber of Commerce

City National Bank
Golden Gate Business Association
Leadership Education for Asian Pacifics
Long Beach Gay & Lesbian Chamber of Commerce
Los Angeles LGBTQ Chamber of Commerce
National Association of Women Business Owners
National Association of Women Business Owners – Bakersfield Chapter
National Association of Women Business Owners – Ventura Chapter
National Veteran Business Development Council
New America Alliance
NORCAL Mutual Insurance Company
Out Leadership
Tulare Kings Hispanic Chamber of Commerce
Veterans in Business Network

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 702 (Limón, 2021) requires the office of the Governor to convene a working group to make recommendations on the most effective way to ensure the state's leadership on boards and commissions reflects a diversity in race, gender identity, class, region, and creed, among other things, that is reflective of the state's population as a whole. The bill also requires the office of the Governor to create and deliver to the Legislature a report containing specified information about the demographic makeup of current gubernatorial appointees. SB 702 is currently pending consideration before the Senate Appropriation Committee.

Prior Legislation:

SB 534 (Bradford, Ch. 249, Stats. 2019) codified the Insurance Diversity Task Force, reenacted and expanded the insurer Supplier Diversity Survey, and codified the insurer Governing Board Diversity Survey.

AB 979 (Holden, Ch. 316, Stats. 2020) a publicly held domestic or foreign corporation whose principal executive office is located in California to have a minimum of one director from an under-represented community by no later than the end of 2021. The bill defined "director from an underrepresented community" as an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.

SB 826 (Jackson, Ch. 954, Stats. 2018) required each publicly held corporation whose principal executive offices are located in California to have a minimum number of women on its board of directors, as specified.

SB 488 (Bradford, 2017) would have renewed and broadened the Supplier Diversity Survey and codified the Governing Board Diversity Survey and would have authorized the CDI to issue data calls and surveys relating to core function of the CDI via emergency regulations. SB 488 died in the Assembly Appropriations Committee.

AB 601 (Ridley-Thomas, 2017) was substantially similar to SB 488. AB 1601 died in the Assembly Appropriations Committee.

AB 865 (Alejo, Ch. 583, Stats. 2015) required the State Energy Resources Conservation and Development Commission to develop and implement an outreach program to inform the most qualified loan and grant applicants, and contractors, including, but not limited to, women, minority, disabled veteran, and LGBT business enterprises, as defined, about workshops, trainings, and funding opportunities.

AB 1678 (Gordon, Ch. 633, Stats. 2014) directed the Public Utilities Commission to extend to add LGBT-owned enterprises to the requirement that every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with annual gross revenues exceeding $25,000,000, and their regulated subsidiaries and affiliates, implement a program developed by the commission to encourage, recruit, and utilize minority-, women-, and disabled veteran-owned business enterprises, as defined, in the procurement of contracts from those corporations or from their regulated subsidiaries and affiliates, and to require the reporting of certain information.

AB 53 (Solorio, Ch. 414, Stats. 2012) codified the Supplier Diversity Survey until January 1, 2019.

PRIOR VOTES:

Senate Insurance Committee (Ayes 11, Noes 0)

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